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## Chapter 18: State and Local Taxation

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## C H A P T E R 1 8

# State and Local Taxation

NICHOLAS L. METAXAS

### A. SUMMARY

§18.1. **State tax developments.** During the 1964 SURVEY year there were relatively few developments in state taxation. Probably the most important was the two-cent increase in the cigarette tax, with the proceeds earmarked for the maintenance and development of mass transportation facilities throughout the state. This was counterbalanced by a reduction from \$7.65 to \$6.15 per \$1000 of valuation in the effective tax rate applicable to the property measure of the business corporation excise, resulting from the operation of the statutory rollback provision enacted in 1962. Other changes in this area were mainly administrative in nature, having no appreciable effect upon the substantive provisions of the tax laws. The enactment of a statute allowing the reciprocal enforcement of tax liabilities, however, was particularly noteworthy.

§18.2. **Local tax developments.** The most significant event in the field of local taxation was an opinion of the Attorney General clarifying the duties and responsibilities of the Commissioner of Corporations and Taxation with respect to the assessment practices of local assessors. Legislative changes involved primarily either new or more liberal exemptions from the local property tax.

### B. GENERAL TAX ADMINISTRATION

§18.3. **Reciprocal enforcement of tax liabilities.** In the 1964 SURVEY year Massachusetts became the thirty-fourth state to authorize the enforcement of tax liabilities of other states in its own courts on a reciprocal basis.<sup>1</sup> State and local tax officials in this Commonwealth formerly could not collect taxes legally due by bringing suit in other states, since Massachusetts did not permit other states to use our courts to collect their taxes. If a taxpayer removed himself from this jurisdiction, the state and its municipalities were powerless in trying to enforce their tax liabilities outside the Commonwealth. Under this act other states and their subdivisions, which extend a

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§18.3. <sup>1</sup> Acts of 1964, c. 500, inserting G.L., c. 58, §28C.

like comity to this state, are now permitted to sue for the collection of their taxes in the courts of the Commonwealth. This right, however, is limited to liabilities for taxes similar to taxes imposed by Massachusetts. Under the statute, a certificate by the Commissioner of Corporations and Taxation that the tax of such other state or its political subdivision is similar to a tax imposed by the Commonwealth is *prima facie* evidence of such similarity.

In addition, the Attorney General, at the request of the State Tax Commission, is now specifically authorized to bring suit in any other state for the collection of any tax legally due the Commonwealth. Similarly, cities and towns may bring suit in any other state for the collection of their taxes.

**§18.4. State deputy collectors.** Under the income tax law and other tax statutes the Commissioner of Corporations and Taxation, in collecting taxes, is authorized to employ all of the remedies provided by Chapter 60 of the General Laws for the collection of taxes on personal estates by town tax collectors. Section 92 of this chapter provides that the collectors of taxes of towns, subject to the approval of the Commissioner, may appoint deputy collectors who will have all the powers of collectors. However, no similar statutory authority was vested in the Commissioner. This situation has been remedied in this SURVEY year, and the Commissioner is now specifically authorized to designate such employees of the Department as he deems expedient as deputy collectors with all the powers of collectors under Chapter 60.<sup>1</sup> These deputy collectors will serve without pay, except for their regular compensation as departmental employees, and, as are sheriffs, deputy sheriffs, and constables, they will be permitted to serve warrants for the collection of state taxes anywhere within the Commonwealth. Unlike the other officers, however, the deputy collectors cannot collect any fees other than the statutory fees that are part of the tax and returnable to the Commonwealth.

The purpose of this act is to develop and utilize within the Tax Department a full-time collection staff. It is essential to an efficient tax collection system that all aspects of the collection process be handled by employees of the Department. Only employees have the right to examine and audit the books and records of the taxpayer, and only through such an examination can a valid determination be made of the ability of the taxpayer to pay his tax liabilities. Progressive tax departments, including the Federal Internal Revenue Service, have long recognized that taxes cannot be collected adequately on a fee or contract basis. The relatively brief experience of the Department in using its own employees for tax collections has already confirmed the desirability and value of having a professional and knowledgeable collection staff.

**§18.5. Discretionary abatement of taxes.** In addition to the reg-

<sup>1</sup> Acts of 1964, c. 460, amending G.L., c. 14, §3; c. 62, §41; c. 63, §72; and c. 65, §33.

ular provisions relative to the abatement of taxes under the various state tax statutes, there is an additional abatement statute which authorizes the State Tax Commission, in its discretion, to abate taxes illegally assessed or levied, or those that are excessive or unwarranted.<sup>1</sup> Unlike the regular abatement statutes, which provide for an appeal to the Appellate Tax Board from an adverse decision of the Commission, the action of the Commission upon a discretionary application for abatement is final, with no right of appeal.

This provision was originally enacted in 1919, in order to give a remedy to taxpayers who did not file applications for abatement within the relatively short periods of time then provided in the regular abatement statutes. They could apply for a discretionary abatement within two years from the date of the bill or the notice of assessment. Since that time, however, the period within which regular applications for abatement may be filed has been extended substantially, so that the circumstances in which the discretionary abatement provision would be applicable have become extremely limited. Moreover, since the original enactment most taxes have become self-assessing, in the sense that the taxes are due and payable with the return. No notice of assessment or bill is sent to the taxpayer unless there is a balance owing. This statute, nonetheless, began to toll from the date of the bill.

The time for filing a discretionary abatement application has been extended from two years from the date of the bill or notice of assessment to five years from the statutory due date of the return. Its provisions were also extended to cover the state taxes and excises not previously included.<sup>2</sup> The amendment brings this statute in line with the changes made in the other tax laws and gives taxpayers, in most cases, additional time beyond the regular abatement periods within which they may apply for discretionary abatements.

**§18.6. Assessment, collection, and refund of small amounts.** In past years there has been no comprehensive statutory provision, applicable to all state taxes, authorizing the Tax Department to assess or collect taxes by rounding off tax liabilities to the nearest whole dollar.<sup>1</sup> However, by a new legislative amendment the Commissioner of Corporations and Taxation and the State Tax Commission are now permitted, under regulations issued by the Commission, to round off to the nearest whole dollar in assessing or collecting any tax or excise, or in allowing of any amount as a credit, refund, or abatement.<sup>2</sup> The amendment also authorizes the Commission to abate any unpaid tax assessment or liability if the amount due does not exceed one dollar and the Commission determines that the administration and

§18.5. <sup>1</sup> G.L., c. 58, §27.

<sup>2</sup> Acts of 1964, c. 468, amending G.L., c. 58, §27, and applicable to applications for abatement filed after December 31, 1964.

§18.6. <sup>1</sup> Cf. G.L., c. 14, §5.

<sup>2</sup> Acts of 1964, c. 491, inserting G.L., c. 58, §26B.

collection costs involved would not warrant collection of the amount due. These provisions eliminate the necessity of assessing or collecting taxes involving small amounts when the administrative costs are disproportionate to the amounts collected.

### C. PERSONAL INCOME TAX

**§18.7. Employers' monthly withholding return.** Under the monthly withholding law enacted in 1963, employers who can reasonably expect that taxes withheld from the wages of their employees will exceed \$600 for the calendar year are required to pay over such withheld taxes on a monthly, rather than quarterly, basis on or before the fifteenth day of the succeeding month. Many of these employers were fearful that they would not be able to meet the due date of January 15 for their December returns and payments, because the December returns must include summary statements for the year as well as copies of the employee withholding statements. These forms are usually not fully prepared and distributed until the end of January. For this reason, the date for filing the return and paying over the withheld taxes for the month of December has been extended from January 15 to January 31.<sup>1</sup> The filing and payment date for all other months continues to be the fifteenth day of the succeeding month.

**§18.8. Refund of taxes.** The statute relating to the abatement of personal income taxes, General Laws, Chapter 62, Section 43, did not provide adequately for the refunding of income taxes withheld from, or paid on an estimated basis by, a person who is not otherwise required to file an income tax return. A person whose annual income is under \$2000, although not required to file a return, must normally do so in order to receive a refund of any taxes withheld by his employer. Because no return is required, there was no clearly applicable time limit within which such a person was required to file for his refund. To remedy this situation the abatement statute has been amended so that a person who is not required to file an income tax return and who has made an overpayment is now required to file for his refund within three years from the date of overpayment.<sup>1</sup> The date of payment with respect to withheld and estimated taxes is defined as the fifteenth day of the fourth month following the close of the taxable year.

Withheld and estimated taxes may be refunded within six months of the due date of the return without the payment of interest. Such a six-month period, however, was not granted in the event that a taxpayer filed a late return. The act also corrects this defect by providing that no interest is payable on a refund of withheld or estimated taxes if it is made within six months of the date of payment of the

§18.7. <sup>1</sup> Acts of 1964, c. 402, amending G.L., c. 62B, §5.

§18.8. <sup>1</sup> Acts of 1964, c. 488, amending G.L., c. 62, §43.

tax or within six months of the date that the return (or the application for abatement when no return is required) is actually filed, whichever is later.

This amendment applies to applications for abatement filed on and after January 1, 1965. Therefore, applications for refund of 1959 and 1960 withheld or estimated taxes, when no return is otherwise required, are barred after December 31, 1964. Applications for refund of 1961 withheld or estimated taxes, when no return is otherwise required, must be filed on or before April 15, 1965.

#### D. CORPORATION EXCISE TAX

**§18.9. Rollback of property tax rate.** In the 1962 revision of the business and manufacturing corporation excise, which eliminated the old corporate excess measure based upon the value of capital stock, the tax rate upon the property measure of the excise was increased from an effective rate of \$6.15 per \$1000 of valuation to \$7.65, in order to maintain equivalent revenue from this excise. The statute provided, however, that any increase in the revenues from this source in excess of the 1962 fiscal year collections plus \$3,000,000 for each succeeding fiscal year would be used by the State Tax Commission to roll back the \$7.65 rate to its previous level of \$6.15.<sup>1</sup> In 1963 the act instituting a system of estimated tax payments for certain corporations stipulated that accelerated payments made by business corporations must be included in computing the total collections for the purpose of the rollback feature of the law.<sup>2</sup> This requirement practically ensured the full operation of the rollback in 1964.

Collections from business corporations for the year ending on June 30, 1962, totaled \$101,300,000. To have any rollback in 1964, the earliest time when this feature could be made effective, such collections for the year ending on June 30, 1964, would have had to exceed \$107,300,000. Any revenues collected in excess of that amount could be utilized for effecting a property tax rate reduction. It had been estimated that an excess of \$8,000,000 would be sufficient for a full rollback to the \$6.15 rate, or a 25 percent cut in the corporation property tax rate. The actual collections for the 1964 fiscal year totaled \$121,345,105.61, producing an excess of \$14,000,000, more than enough for a maximum tax rate reduction. Therefore, in accordance with the statute, the State Tax Commission has rolled back the tax rate upon the property measure of the business corporation excise to an effective rate of \$6.15 per \$1000 of valuation. This reduced rate is applicable to taxable years ending December 31, 1964, and thereafter.

**§18.10. Apportionment of assets.** The 1962 revision of the business and manufacturing corporation excise in several instances apportions the assets of a corporation to the state on the same basis

§18.9. <sup>1</sup> G.L., c. 63, §30A.

<sup>2</sup> Acts of 1963, c. 714, §10.

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used to allocate the corporation's remainder net income to the state. In the event that a corporation operates at a loss for any taxable year, it has no remainder net income. A question therefore arose as to the manner in which the assets of such a corporation would be apportioned. In a strictly literal interpretation of the statutory provisions, it could be argued that none of the corporation's assets should be apportioned to Massachusetts, since the corporation allocates no remainder net income to the state. Although this interpretation was never seriously advanced to the State Tax Commission or considered by it, the statute has been clarified in this regard.<sup>1</sup> Assets of a corporation in these instances are now apportioned on the basis of its income apportionment percentage, rather than the ratio of its Massachusetts remainder net income to its total remainder net income. For a corporation operating at a profit, this amendment makes no change in the apportionment of assets. The same result is reached whether the income ratio or the income apportionment percentage is used.

§18.11. **Savings bank excise exemptions.** The exemptions under the savings bank excise continue to increase. During the past year the twenty-seventh and twenty-eighth exemptions were enacted. Savings deposits invested in bonds, notes, or other evidences of indebtedness issued by the Massachusetts Bay Transportation Authority<sup>1</sup> and by the Southeastern Massachusetts Technological Institute Building Authority<sup>2</sup> are exempt from the savings bank excise.

§18.12. **Interstate commerce.** In *M. A. Delph Brokerage Co., Inc. of New England v. State Tax Commission*,<sup>1</sup> the Supreme Judicial Court found that the taxpayer, a foreign corporation, was engaged exclusively in interstate commerce, and therefore was not subject to the Massachusetts corporation excise. After making a detailed analysis of the facts concerning the corporation's methods of operation and its activities in Massachusetts, the Court concluded that it performed no local service. Its solicitation of offers to buy hides from out-of-state sellers did not constitute intrastate business. The Court refused to accept the conclusion of the Commission that the taxpayer was a broker or agent for the purchasers rather than the sellers since the brokerage commissions were paid by the purchasers. This corporation was therefore not subject to excise taxation in Massachusetts, even though substantially all of its corporate operational activities were performed here. While the Court continues to adopt a strict standard regarding the activities that constitute intrastate business, Massachusetts will be able to tax these interstate corporations only by adopting a corporate income tax to complement its corporation excise. A two-tier corporation tax has been adopted in a number of states which,

§18.10. <sup>1</sup> Acts of 1964, c. 375, amending pars. 7-10 of G.L., c. 63, §30.

§18.11. <sup>1</sup> Acts of 1964, c. 563, §3, inserting G.L., c. 63, §12(aa).

<sup>2</sup> Id., c. 703, §26, inserting G.L., c. 63, §12(bb).

§18.12. <sup>1</sup> 1964 Mass. Adv. Sh. 305, 196 N.E.2d 628, also noted in §11.6 *supra*.

like Massachusetts, levy a basic franchise or privilege tax upon corporations.

**§18.13. Notice of intention to assess.** The Commissioner of Corporations and Taxation, in assessing the corporation excise, may not determine the income of any corporation which has filed a timely return to be in excess of the income shown by its return without first giving notice to the corporation of his intention and giving it an opportunity to explain the apparent incorrectness of its return.<sup>1</sup> The Commissioner changed the gross receipts factor of the statutory income apportionment formula on the return of the Upjohn Company, thereby increasing its apportionment percentage and the portion of its net income allocable to Massachusetts. He did not notify the corporation, prior to assessment, of his intention to determine its income to be in excess of that reported. The corporation contended that the failure to give this prior notice invalidated the assessment to the extent that it exceeded the tax as computed by the taxpayer. In *Upjohn Company v. State Tax Commission*,<sup>2</sup> the Supreme Judicial Court held that the statutory provision requiring prior notice to the taxpayer before increasing taxable income was a condition precedent to a valid assessment, and it agreed that the failure to give this notice invalidated the part of the assessment based upon the increase in income. It noted that the taxpayer's right to contest a tax before payment is important, and that the failure to give the notice injuriously affected that right.

In assessing Upjohn's excise, the Commissioner also used the revised income apportionment percentage in allocating the corporation's intangible assets to Massachusetts for purposes of applying the corporate excess measure of the excise. Although the Commissioner is not required to give prior notice in making changes in the non-income measures of the excise, the Court also struck down the increase in the corporate excess measure attributable to the use of the revised income apportionment percentage. It felt that any other result would be incongruous.

### E. INHERITANCE TAX

**§18.14. Statutory changes.** The inheritance tax law has formerly required that the inventory of the decedent be filed with the Commissioner of Corporations and Taxation within four months of the date of death. In most cases four months is too short a period for a person to qualify as a representative of the estate and to gather the assets of the deceased. Frequently even the appointment of the fiduciary cannot be made within this period. The time for filing this inventory has therefore been extended to three months after the appointment of the executor, administrator, or trustee or one year after the date of death of the deceased, whichever period expires

§18.13. <sup>1</sup> G.L., c. 63, §44.

<sup>2</sup> 1964 Mass. Adv. Sh. 561, 197 N.E.2d 601.



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first.<sup>1</sup> This amendment became effective on September 2, 1964; it applies to property or interests therein passing or accruing upon the death of persons who died on or after that date.

The only other statutory change was a technical one. Formerly, the tax inventory of a decedent could be filed either in the Probate Court or with the Commissioner. Since 1961 the inventory, for inheritance tax purposes, must be filed with the Commissioner. However, the lien provision under Section 9 of Chapter 65 of the General Laws continued to define "inventory" as the inventory of the estate of the deceased filed in the Probate Court or the tax inventory filed with the Commissioner. This definition has been amended in order to make it consistent with the 1961 change. Inventory is now defined in Section 9 as the tax inventory filed with the Commissioner.<sup>2</sup>

§18.15. **Court decisions.** As a result of a bona fide dispute between Emeric de Pfluegl and his wife's three children (all of a former marriage) over the settlement of his wife's estate, de Pfluegl established an irrevocable trust in 1951. The settlement was made at arm's length and in good faith. The trust provided a \$3500 annuity for de Pfluegl during his life and at his death gave the trust property to his wife's grandchildren as selected by his stepchildren. De Pfluegl died in 1956. During the five years between 1951 and 1956, the trust property increased appreciably in value. Upon de Pfluegl's death, the Commissioner of Corporations and Taxation contended that the trust was subject to taxation under General Laws, Chapter 65. The trustee conceded that the remainder interests did take effect in possession or enjoyment after de Pfluegl's death but contended that the transfer was exempt, under General Laws, Chapter 65, Section 1, as "a bona fide purchase for full consideration in money or money's worth" and that the sufficiency of the consideration must be determined by comparing the 1951 value of what de Pfluegl received as consideration in 1951 against the 1951 value of what he gave up. The Commissioner, however, contended that the 1951 value of the consideration received by de Pfluegl must be compared with the value of the trust property at the date of his death in 1956.

In *Old Colony Trust Co. v. Commissioner of Corporations and Taxation*<sup>1</sup> the Supreme Judicial Court sustained the trustee's position that no inheritance tax was owing on the de Pfluegl trust since full consideration in money or money's worth for the trust was to be found in the settlement of the substantial claims of the stepchildren. The Court noted that the federal cases under comparable federal estate tax provisions assume that the adequacy of the consideration will be determined at the time of the bargain. Otherwise, taxability would depend upon the fortuitous circumstance of whether the value of the transferred property had gone up or down between the date of

§18.14. <sup>1</sup> Acts of 1964, c. 470, §2, amending G.L., c. 65, §22.

<sup>2</sup> Acts of 1964, c. 470, §1, amending G.L., c. 65, §9.

§18.15. <sup>1</sup> 346 Mass. 667, 195 N.E.2d 332 (1964).

transfer and the date of death. The Court refused to follow the language in earlier cases<sup>2</sup> to the effect that the adequacy of the consideration must be measured at the date of the taxable succession, since such a rule is not required by the statute, is inconsistent with the usual concept of consideration, and would lead to possible double taxation of the transferred property and of the consideration received for it. Thus, the Court has established that the adequacy of the consideration in an inter vivos, arm's length transaction, for the purpose of exemption under the inheritance tax law, is properly determined at the time of the bargain.

The second inheritance tax case decided during the 1964 SURVEY year involved an irrevocable inter vivos trust established in 1928 for the benefit of the settlor's two children and their issue. The settlor himself had no beneficial interest in the trust. During the settlor's life the trustees were required to pay \$10,000 annually from the income to each of his children and to the issue of any deceased child by right of representation; in their discretion the trustees could pay any or all of the income in excess of \$20,000 to the same beneficiaries in equal shares. After the settlor's death the entire net income was to be paid out to these beneficiaries until twenty-one years after the death of designated persons. At that time the trust would terminate, and the principal was to be paid to the settlor's grandchildren and to the issue of his deceased grandchildren. The trust estate at the settlor's death in 1956 was valued at over \$4,000,000, and the annual income was greatly in excess of \$20,000. During the settlor's lifetime the trustees in their discretion had paid the beneficiaries more than the mandatory \$20,000.

The Supreme Judicial Court, in *Steward v. Commissioner of Corporations and Taxation*,<sup>3</sup> found that the interests in the income of the trust in excess of \$20,000 a year, after the settlor's death, were taxable under General Laws, Chapter 65, Section 1. Neither the interests in any other income nor the remainder interests in the principal were taxable, since their receipt in possession and enjoyment was not dependent upon the settlor's death. The Court found that the taxability of the income in excess of \$20,000 resulted from the fact that the full fruition of the transfer in possession and enjoyment was dependent upon the settlor's death. It was only at that time that this income became definitely payable to the beneficiaries. The four Justices who joined in a concurring opinion reasoned that the basis of taxability was the fact that the absolute right of the beneficiaries to succeed to the additional income in excess of \$20,000 was expressly made dependent upon the settlor's death by the trust instrument. By so providing in the trust instrument, the settlor had suffi-

<sup>2</sup> Worcester County National Bank v. Commissioner of Corporations and Taxation, 275 Mass. 216, 175 N.E. 726 (1931); State Street Trust Co. v. Treasurer and Receiver General, 209 Mass. 373, 95 N.E. 851 (1911).

<sup>3</sup> 1964 Mass. Adv. Sh. 1141, 200 N.E.2d 460 (1964).

ciently caused a succession to take place then, dependent upon his death, to make the succession taxable.

## F. CIGARETTE TAX

§18.16. **Rate increase.** The cigarette tax was increased from six cents to eight cents per package effective as of January 1, 1965, in order to finance the Commonwealth's obligations under the mass transportation legislation adopted this SURVEY year.<sup>1</sup> Of the total eight-cent cigarette excise, six cents will continue to be used for meeting the debt service obligations of the Commonwealth and the remaining two cents will be used for the purposes of the Mass Transportation Act.<sup>2</sup> In order to prevent a loss of revenue through large purchases of cigarettes prior to the effective date of the tax increase, all licensees were required to pay an additional excise of two cents per package on all cigarettes on hand as of January 1, 1965, upon which a six-cent tax has already been paid.<sup>3</sup>

Although the principal financial assistance will be given to the Massachusetts Bay Transportation Authority, a portion of the cigarette revenues will be used to refund to the Authority, transportation areas, and bus companies the motor vehicle excises and the fuel excises paid by them during the previous year.<sup>4</sup>

A minor amendment to the cigarette excise law gave to the Commissioner the powers and remedies with respect to collection that he has in the collection of corporation excises under General Laws, Chapter 63, and the collection of income taxes under General Laws, Chapter 62. For this purpose he previously had only the powers and remedies under Chapter 62.<sup>5</sup> The change permits the Attorney General, at the relation of the Commissioner, to enjoin a taxpayer from prosecution of his business until his cigarette excise taxes have been paid.<sup>6</sup>

## G. LOCAL TAXATION

§18.17. **Legislative changes.** The myriad of exemptions from local property taxation continues to increase both in kind and degree. The exemption for parsonages was increased from \$10,000 to \$15,000 and was extended to the residences of the district officials of the New England Synod of the Lutheran Church in America and of the Unitarian-Universalist churches.<sup>1</sup> Aircraft have been exempted from personal property taxation but in lieu thereof are now subject to a

§18.16. <sup>1</sup> Acts of 1964, c. 563, §5, amending G.L., c. 64C, §6.

<sup>2</sup> Id. §6, inserting G.L., c. 64C, §28.

<sup>3</sup> Id. §4.

<sup>4</sup> Id. §2, inserting G.L., c. 58, §25B.

<sup>5</sup> Acts of 1964, c. 469, amending G.L., c. 64C, §9.

<sup>6</sup> G.L., c. 63, §75.

§18.17. <sup>1</sup> Acts of 1964, cc. 69, 354, amending G.L., c. 59, §5, clause 11. See Acts of 1964, c. 102, for a special exemption for the real estate of the Association of the Evangelical Lutheran Church for Works of Mercy.

biennial registration fee varying from thirty-two dollars to one hundred dollars, depending upon the gross weight of the aircraft. Such fees are payable to the Massachusetts Aeronautics Commission.<sup>2</sup> The widow of a police officer killed in the line of duty has been granted an eight-thousand dollar real estate exemption for her home until she remarries.<sup>3</sup> The excise upon farm animals, five dollars per one-thousand dollars of valuation, in lieu of personal property taxation has been extended to farm machinery and equipment.<sup>4</sup> The real estate exemption for the homes of certain elderly persons, seventy years of age and over, has been slightly modified in respect to the requirement that the exempted real estate must have been owned for the preceding five years. The statute now permits the elderly person to change homes within the five-year period provided the new home is in the same city or town.<sup>5</sup>

The cities of Chelsea and Lynn have been given the right to take possession of and to collect the rent and other income from real estate the titles of which are taken because of failure to pay the taxes thereon. After the payment of all necessary expenses for the care, repair, and management of this property, the balance of the income must be applied to payment of the taxes due.<sup>6</sup> Boston has had similar authority since 1962.<sup>7</sup>

**§18.18. State responsibility for local assessments.** The Commissioner of Corporations and Taxation has long maintained that his role in the local taxation field is limited. The General Court has given the Commissioner certain powers in the areas of advice, supervision, and administration but has not given him the right to substitute his judgment for that of the assessors. Nonetheless, demands from taxpayer groups throughout the Commonwealth that the Commissioner enforce the fair and full cash value requirement of the General Laws and correct the alleged wide variance in local assessment practices have steadily increased. Last year a group of taxpayers from Springfield petitioned the Attorney General to take such action as is necessary to compel the Commissioner to exercise his authority in this field.

As a result, the Commissioner requested the Attorney General to clarify his authority and responsibility with respect to the valuation and assessment of property subject to local taxation. On March 27, 1964, the Attorney General gave his opinion, which in large measure sustained the position that had previously been taken by the Commissioner.

<sup>2</sup> Id., c. 590, amending G.L., c. 90, §49.

<sup>3</sup> Id., c. 715, inserting G.L., c. 59, §5, clause 42.

<sup>4</sup> Id., c. 285, amending G.L., c. 59, §8A. The \$1000 exemption from personal property taxation for farm machinery has been eliminated. Ibid., amending G.L., c. 59, §5, clause 20.

<sup>5</sup> Acts of 1964, c. 681, amending G.L., c. 59, §5, clause 41.

<sup>6</sup> Acts of 1964, cc. 126, 214.

<sup>7</sup> Acts of 1962, c. 247.

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The Attorney General quoted extensively from the *Hobart* case,<sup>1</sup> in which the Supreme Judicial Court had stated that the assessors are not subordinate to or subject to the control of the Commissioner and that they act under his direction only so far as the power of direction is conferred upon him by statute. They are independent public officials responsible to the citizens of the city or town they serve. Analyzing the Commissioner's statutory powers, the Attorney General was of the opinion that the Commissioner could not substitute his judgment for that of the local assessors; that the Commissioner is not granted the authority to enforce the fair and full cash value requirement of the General Laws; and that the Commissioner's powers are limited to the areas of advise, supervision, and administration. The Attorney General was further of the opinion that if the Commissioner determines that a city or town is assessing property in the aggregate substantially below its full and fair cash value, he has the authority, and it is incumbent upon him, to direct the assessors to make the necessary adjustment in aggregate valuation. If the assessors fail to do so, the Commissioner may make the appropriate recommendation to the mayor or selectmen.<sup>2</sup>

If citizens feel that their assessors are not adequately or properly carrying out their duties, they may try to correct the situation either through their votes or by bringing suit in court. Within the past year several of such taxpayers' suits have been instituted; they may be more fully developed during the next SURVEY year.

§18.18. <sup>1</sup> *Hobart v. Commissioner of Corporations and Taxation*, 311 Mass. 341, 41 N.E.2d 38 (1942).

<sup>2</sup> G.L., c. 58, §4.